Supreme Court, U.S.
FILED
MAR 19 1980
ALEXANDER L. STEVAS, CLERK

No. 79-1268

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

PATRICIA A. HARRIS, SECRETARY OF THE DEPARTMENT OF HEALTH, EDUCATION AND WELFARE,

Appellant

v.

CORA McRAE, ET AL.

Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR AMICI CURIAE AMERICAN ETHICAL UNION; AMERICAN HUMANIST ASSOCIATION; BOARD OF CHURCH AND SOCIETY, UNITED METHODIST CHURCH; CATHOLICS FOR A FREE CHOICE; CHURCH OF THE BRETHREN; DEPARTMENT OF CHURCH WOMEN OF THE DIVISION OF HOMELAND MINISTRIES, CHRISTIAN CHURCH (DISCIPLES OF CHRIST); NATIONAL FEDERATION OF TEMPLE SISTERHOODS; NATIONAL WOMEN'S CONFERENCE OF THE AMERICAN ETHICAL UNION; UNITARIAN UNIVERSALIST ASSOCIATION; UNITARIAN UNIVERSALIST WOMEN'S FEDERATION; UNION OF AMERICAN HEBREW CONGREGATIONS; YOUNG WOMEN'S CHRISTIAN ASSOCIATION.

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THE CASILLAS PRESS, INC.–1717 K Street, N. W.–Washington, D. C.–223-1220

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INTEREST OF THE AMICI

The organizations joining in this brief neither favor nor oppose abortion, although among the millions of Americans who comprise their memberships there are many whose religious conscience calls for access to abortion for all women regardless of economic circumstances. All the organizations share in the belief that the decision either to undergo or forego abortion must be personal and

uncoerced by government. They further believe that the unitary principle of church-state separation and religious freedom forbids government to impose upon all the theology of one or more sects. Their religious conscience is offended by a law which makes the abortion procedure fully available to women who are fortunately able to pay for them but, realistically, denies it to the poor and underprivileged when needed to protect the health and welfare of themselves and their families. Finally, they are unable to accept, as consistent with the concept of a democratic society, a system of law under which churches whose views on the sinfulness of abortion, whether or not shared by the majority of Americans, can utilize statutory exceptions to achieve by force of poverty their theological ends among the economically disadvantaged.

For these reasons they respectfully submit this brief *amici curiae.*

THE QUESTION TO WHICH THIS BRIEF IS ADDRESSED

This brief is addressed to the single question whether consistent with the Establishment and Free Exercise Clauses of the First Amendment to the Constitution, the federal or state governments can deny Medicaid benefits for abortions where a paramount purpose of the denial is to prevent abortions by reason of the fact that they are condemned as sinful by particular religious groups.

Although the *amici* do not address themselves to the question whether such denial can be sanctioned under the Equal Protection Clause of the Fourteenth Amendment as applicable to the states and the Due Process Clause of the Fifth Amendment as applicable to the federal government, they take this opportunity to express to the Court their opinion that the District Court was correct in answering that question in the negative.

SUMMARY OF ARGUMENT

Even in the absence of the First Amendment prohibitions, the spirit if not the letter of the provision in Article VI of the Constitution forbidding religious tests for public office militates against the denial of governmentally financed access to abortion procedures on the part of the economically disadvantaged solely by reason of the religious objections to the procedure on the part of one or more churches. Independent thereof, the statute challenged violates both the Establishment and Free Exercise Clauses of the First Amendment. It violates the former under the test set forth in *Everson* v. *Board of Education*, 330 U.S. 1, 15 (1947) and other cases, because it constitutes a law which prefers those religions that forbid abortion over those which do not, and injures women who do not profess a religious belief forbidding abortion by withholding from them a government benefit available to others. It further violates the Establishment Clause as defined in *Wolman* v. *Walter,* 397 U.S. 664 (1977), and many other cases, in that its purpose, as abundantly proved by its history, is religious rather than secular, and its effect is to advance religions which forbid abortions and to inhibit religions which do not. Finally, the challenged law violates the Free Exercise Clause because it imposes the inhibitions of those religions that deem abortions sinful upon persons whose religious beliefs do not exclude abortion procedures, and particularly upon those who believe, therefore that the poor must have equal access to the procedure to mitigate against the tragedies which may result from unplanned pregnancies.

I. Introductory

A. *Position of the Amici*

It is the position of the *amici* that the challenged statute, insofar as it excludes abortion procedures from its benefits, is basically a religious law and is thus not only inconsistent with American traditions and values, but is also unacceptable under a constitution that forbids laws respecting an establishment of religion or prohibiting its free exercise. The law challenged here imposed governmental sanctions, in the form of deprivation of access to the benefits of the Medicaid programs (Title XIX of the Social Security Act), for violation of a religious mandate that equates abortions, from moment of conception, and murder. Basically what the law does is to give governmental effect to the dogma and doctrine of the churches and religions which espouse that view.

The Roman Catholic Church is the largest religious denomination which forbids abortion, but it is, of course, not the only one. The voluminous record in this case and other sources indicate that there are other religious groups, such as the Missouri Synod of the Lutheran Church, the Church of Jesus Christ of the Latter Day Saints (popularly known as the Mormon Church), Orthodox Jewish congregations, and various Protestant Fundamentalist sects which share in the doctrine that forbids abortion, although perhaps not to the extreme of forbidding the procedure even where necessary to preserve the life of the woman.

The religions that oppose abortion demand its exclusion from the coverage of the Medicaid program even in respect to women who do not equate abortion with

murder, do not consider it sinful, and to the contrary, deem it an appropriate and sometimes necessary response to an unplanned and health-threatening pregnancy. It is our view that only the intervention by these religions in the law-making process realistically accounts for the exclusion of abortion procedures from the program. Were they to abrogate their theological condemnation of the procedures even if only *de facto* (as in the case of contraceptive birth control), or, without altering their position on abortion, would withdraw their opposition to Medicaid coverage, it can hardly be doubted that the governments, state and federal, would include the procedure.

We recognize, of course, that the acceptance by most faiths of abortion as a licit means to avoid the tragedies which may be caused by an unplanned pregnancy is a comparatively recent development, necessitated by the failure of contraception to achieve that purpose. To the extent that the state laws making abortion a crime reflected religious values when they were adopted, those values were Protestant no less than Catholic, and Jewish no less than Christian or Islamic. But it is the obligation of the courts to adjudge constitutionality on the basis of present, not past reality. In *McGowan* v. *Maryland* and the other Sunday law Cases, 366 U.S. 420 *et. seq.* (1961) the Court recognized that the challenged statutes reflected religious values when they were adopted but it nevertheless upheld their constitutionality on the basis of the current, rather than past, reality that their purpose had in time become secular.

What we have in the present situation is the converse. As this Court observed in *Roe* v. *Wade,* 410 U.S. 113, at 139 [1973], abortion laws like many other criminal statutes, represented, when originally enacted, secular values more so than religious ones. The record in this case establishes what is so widely known and accepted that it

could well be judicially noticed: today's opposition to abortion, including the effort to enact a constitutional amendment nullifying *Roe* v. *Wade* and the instant restriction on governmental financing of the procedure for the economically disadvantaged, reflect religious rather than secular values.

Determination of constitutionality on the basis of the realities of today rather than of yesteryear is by no means unprecedented in American constitutional history. Acceptance of racial segregation in public schools as not inconsistent with the substance of the 13th and 14th Amendments was widespread if not universal throughout the nation, even in such abolitionist states as Massachusetts. See, *Roberts* v. *City of Boston,* 59 Mass. 198 (1849); *Plessy* v. *Ferguson,* 163 U.S. 537 (1896). That fact, however, did not foreclose a unanimous decision to the contrary on the part of the Court, handed down later in *Brown* v. *Board of Education,* 347 U.S. 483 (1954).

Capital punishment presents another example of the same proposition – that constitutionality must be determined by current rather than past values. While the Court has not as yet held the penalty unconstitutional in all cases, it has restricted it to a far greater extent than was contemplated when the Eighth Amendment was adopted. Moreover, the Fifth Amendment, by providing that no person shall "be twice put in jeopardy of life or limb" for the same crime, obviously sanctioned putting persons in jeopardy of limb *once* for a particular crime. Yet it is doubtful that any court in the United States would today uphold the constitutionality of a law providing that the hand of a convicted thief shall be cut off as punishment for this crime.

In sum, what we contend is that in applying the Establishment and Free Exercise Clauses to the issue

before the Court in the present case, the realities of today rather than of former years must be the determinant factor. Those realities, we submit, necessitate a conclusion that denial of Medicaid benefits for abortion procedures cannot be reconciled with the mandates of the Establishment and Free Exercise Clauses.

B *Decision of the District Court*

The District Court rejected the contention that the challenged statute violates the Establishment Clause of the First Amendment. It did hold, however, that in addition to the Equal Protection guaranty as implied in the Due Process Clause of the Fifth Amendment, the statute impinged upon the Free Exercise Clause when abortion is resorted to "in conformity to religious belief and teaching." The concluding paragraph of the opinion reads as follows:

> A woman's conscientious decision, in consultation with her physician, to terminate her pregnancy because that is medically necessary to her health, is an exercise of the most fundamental of rights, nearly allied to her right to be, surely part of the liberty protected by the Fifth Amendment, doubly protected when the liberty is exercised in conformity with religious belief and teaching protected by the First Amendment. To deny necessary medical assistance for the lawful and medically necessary procedure of abortion is to violate the pregnant woman's First and Fifth Amendment rights. The irreconcilable conflict of deeply and widely held views on this issue of individual conscience excludes any legislative intervention except that which protects each individual's freedom of conscientious decision and conscientious nonparticipation.

We believe that the District Court was completely correct in recognizing the conscientious nature of the abortion decision and the impermissability of restrictions in light of the deep division on this question in our society. But we believe that the Court erred in failing to recognize the Establishment clause violation and thereby limiting the applicability of the First Amendment to the challenged statute.

II. Religious Tests for Public Benefits

The complaint herein does not assert, nor did the court below pass upon any contention that the ban in Article VI of the Constitution on religious tests for public office requires the Court to invalidate the exclusion of abortion procedures from eligibility for Medicaid benefits. Such contention is not necessary for the determination of the present case. What we do suggest is that in construing and applying the First Amendment's mandates in respect to the establishment and free exercise of religion the Court may justifiably be guided by the spirit that underlies the religious test provision.

In *Common Sense* Tom Paine expressed what fifteen years later was to be the substance of the opening words of the First Amendment, that Congress was to make no law respecting an establishment of religion or prohibiting its free exercise. "As to religion," he wrote, "I hold it to be the indispensible duty of government to protect all conscientious professors thereof, and I know of no other business which government hath to do therewith." This principle, at least as applied to the national government, had become part of the American credo by the time our constitution was formulated a decade later; so much so that there were many who believed that (with one exception, shortly to be noted) there was really no need for its restatement in the Constitution. "Why," asked Alexander Hamilton,

"declare that things shall not be done which there is no power to do?"[1] The American people, of course, were not satisfied with exclusion by implication. A bill of rights, said Thomas Jefferson, should not "rest upon inferences," a thought echoed by Patrick Henry who asserted that religious freedom and church-state separation should not rest "on the ingenuity of logical deduction."[2] Because the overwhelming concensus of American opinion agreed with Jefferson and Henry, the First Amendment was added to the Constitution in 1791.

Since it was obviously within the powers of the federal government to prescribe the conditions and requisites for governmental service, the ban on religious tests for public office was necessarily included in the text of the Constitution in accordance with the overwhelming approval of the American people. Applying the intent of that ban to abortion procedures, it would clearly be unconstitutional under it to exclude from governmental services physicians who in their private practice render abortion services. That could not be considered anything but the application of religious test for governmental office.

In *Torcaso* v. *Watkins,* 367 U.S. 488 (1961), the Court ruled violative of the First Amendment a Maryland statute requiring notaries public, as condition to receipt of their license, to take an oath that they believed in the existence of God. The complaint therein included a cause of action based upon the Religious Test Clause in Article VI. Since the Court found the statute violative of the First Amendment, it did not find it necessary to determine whether the Article VI prohibition was applicable to the states. *Ibid,* Footnote 1.

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[1]Federalist Papers, Modern Library Edition, 1937, p. 559.

[2]J. Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution,* 1888, Vol.. V, p. 131.

It can hardly be doubted that had Torcaso been an applicant for notary public license in the adjoining geographical borders of the District of Columbia the denial would have been held violative of the Religious Test Clause. It is inconceivable that any court would hold that the statute did not require notaries public to believe in the existence of God but only to swear that they do; compulsion to take the oath in order to qualify would of itself violate the prohibition. (Cf *Anderson* v. *Laird,* 466 F.2d 283 [D.C. Cir. 1972], *certiorari denied,* 409 U.S. 1070 [1972], wherein compulsory chapel attendance by military cadets was held unconstitutional notwithstanding claim that they were not required to believe what they heard but only to be present.) Nor, to bring the Torcaso illustration closer to home, would the Court have decided differently if the challenged statute had provided only that a person otherwise entitled to receive governmental reimbursement for a notary public's fee in respect to governmental matters should be turned away because he had not taken the required oath of belief in the existence of God.

The women plaintiffs in this case are not holders of public office and hence the ban in Article VI on religious tests is not applicable to them. Nevertheless, we submit that in adjudging the merits of their claim to the public benefit (rather than public office), of Medicaid reimbursement and of their assertion that exclusion violates the First Amendment; the rationale we have suggested in respect to government employees is relevant and meaningful to a judicial determination of that claim. In short, the spirit if not the letter of Article VI points to the result they seek under the First Amendment, namely that governmental benefits no less than governmental office cannot constitutionally be denied on the basis of what realistically is a religious test.

III. Establishment of Religion

A. *Introductory*

In *Everson* v. *Board of Education,* 330 U.S. 1 (1947), the Court defined the meaning of the Establishment Clause in the following words:

> The "establishment of religion" clause of the First Amendment means at least this. Neither a state nor the Federal government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between Church and State." 330 U.S. at 15.

In more recent decisions the test of constitutionality under the Establishment Clause has been worded somewhat differently. In these cases, the Court has set forth the test in the following language:

> . . . In order to pass muster, a statute must have a secular legislative purpose, must have a principal or primary effect that neither advances nor inhibits religion, and must not foster an excessive entanglement with religion. *Wolman* v. *Walter, supra,* at p. 2596.

The two tests are not inconsistent but rather supplement each other. Indeed, in *Abington Township School District* v. *Schempp,* 374 U.S. 203 (1963), in which the Court first set forth the purpose-effect (later, purpose-effect-entanglement) test, it also relied upon the *Everson* no-aid test, using both to reach the same conclusion of the unconstitutionality of Bible reading and prayer recitation in the public schools. Five years later, in *Epperson* v. *Arkansas,* 393 U.S. 97 (1968), the Court again used both tests to invalidate a statute forbidding the teaching of evolution in public schools. In subsequent cases, the Court has frequently cited and quoted from *Everson* at the same time as it has applied the purpose-effect-entanglement test. See, e.g., *Wolman* v. *Walter, supra,* at 2596.

We submit that whether measured by the *Everson* or the purpose-effect-entanglement test, the statutory bar challenged herein cannot stand.

B. *The Everson Test*

Exclusion of abortion procedures from Medicaid coverage violates the mandate of the *Everson* decision against passing laws which "aid one religion, aid all religions, or prefer one religion over another." This Court can take judicial notice of the fact, obvious to any who read newspapers or periodicals dealing with the news, that for all practical purposes it is the normative interpretation of the dogma and doctrine of some religious groups, which is aided by the exclusion. Irrespective of this, the fact that the submitters of this brief are religious groups

representing millions of Americans is itself further and conclusive proof that the exclusionary statute prefers some religions over others. Having said that, we note that even if we were in error, and even if all the faiths in the nation shared the position of these churches in respect to abortion procedures, the *Everson* ban would still be applicable since it forbids aid to *all* religions, even if the aid be non-preferential.

We do not deem it necessary to establish that denial of Social Security benefits to Americans who resort to abortion constitutes aid to those religions which forbid abortions. Were the mandates of the churches honored by the congregants, there would be no need to exclude abortion from Medicaid coverage. In resorting to Congress and state legislatures, the churches are calling upon governments to do by compulsion that which they have themselves been unable to achieve by persuasion. If separation of church and state means anything, it means that government may not respond affirmatively to such a demand.

The quoted paragraph from *Everson* also forbids, as a violation of the Establishment Clause, participation by a state or the federal government, "in the affairs of any religious organization and vice versa." The role taken by churches in seeking to impose legislative barriers to legal access to abortion generally and to Medicaid abortion benefits in particular is a clear illustration of the "vice versa" prohibition in the *Everson* test, that is, participation by religion in governmental affairs. The law, in effect imposes on the governmental function of distributing social security benefits the religious doctrine against abortion. The Hyde Amendment effectively adds a religious censor to the administration of the welfare program.

Finally, we note in respect to the *Everson* principle, that the Court in that case interpreted the Establishment

Clause as requiring the state to be "neutral in its relations with groups of religious believers and non-believers." Exclusion of Medicaid benefits for abortion procedures, an exclusion urged for practically no reason other than their religion-based unacceptability, is manifestly not consistent with neutrality, either among the religions or between religious believers and non-believers.

C. *The Purpose-Effect-Entanglement Test*

1. Purpose

We note initially that we do not, nor can we rightfully contend that churches violate the Constitution in seeking enactment of legislation that translates into the law of the land their own particular doctrine and dogma. Next to freedom to believe, there is no constitutional right protected by the First and Fourteenth Amendments that is as close to absolute as the right to petition the government for a redress of grievances. That right encompasses petitions upon legislatures, state or federal, and upon their members to enact measures which others may consider to be unconstitutional. What we urge is only that in ascertaining whether the purpose of challenged legislation is to aid or advance religion the courts may and should consider as an evidentiary factor the role played by churches in obtaining its enactment.

In *McGowan* v. *Maryland, supra,* the Court judicially noted that Sunday laws originated as religious laws and that their historic purpose was to forbid desecration of the Christian Sabbath and to coerce compliance with Christian doctrine. It nevertheless upheld the constitutionality of the state law there assailed because it found as a historical fact that in the course of time the religiousity of the law had disappeared and its present purpose and effect

had become the secular one of assuring to all a day of rest and relaxation. However, in the closing paragraph of the Chief Justice's opinion for the Court, he was careful to note (366 U.S. at 453):

> Finally, we should make it clear that this case deals only with the constitutionality of §521 of the Maryland statute before us. We do not hold that Sunday legislation may not be a violation of the "Establishment" clause if it can be demonstrated that its purpose — evidenced either on the face of the legislation, in conjunction with its legislative history, or in its operative effect — is to use the State's coercive power to aid religion.

Several years later, in *Epperson* v. *Arkansas, supra,* the Court found that the religious purpose of the challenged statute, which forbade the teaching of evolution in the public schools, had been adequately demonstrated.

> . . . It is clear [the Court said] that the fundamentalist sectarian conviction was and is the law's reason for existence. Its antecedent, Tennessee's "monkey law," candidly stated its purpose was to make it unlawful "to teach any theory that denies the story of the Divine Creation of man as taught in the Bible, and to teach instead that man has descended from a lower order of animals." Perhaps the sensational publicity attendant upon the Scopes trial induced Arkansas to adopt less explicit language. It eliminated Tennessee's reference to "the story of the Divine Creation of man" as taught in the Bible, but there is no doubt that the motivation for the law was the same: to suppress the teaching of a theory which, it was thought, "denied" the divine creation of man. (393 U.S. at 108-109).

Compulsion by withholding sorely needed funds, we respectfully suggest, is not constitutionally distinguishable from the less subtle form of duress in dismissal from employment.

Among the millions of persons who are affiliated with the religious organizations joining in this brief amici curiae there are undoubtedly many persons who adhere to a literal interpretation of the Bible and reject an evolutionary explanation of the origin of human beings. Some of them do, and are constitutionally entitled to demand that their own children be excused from attending class when the evolutionary explanation is presented. Some, finding this inadequate, support and send their children to those nonpublic schools which adhere to their own religious commitments in respect to the teaching of the origin of the human race. But all recognize that under the First Amendment they cannot rightfully demand that the public schools not teach the theory of evolution even though they themselves are compelled by law to pay taxes which are used in part to finance the operations of those schools. Indeed, the effort to restrict the teaching of evolution in *Epperson* (393 U.S., at 98 note 3, 108 note 16) was exclusively predicated on use of tax funds for that purpose.

Applying the *Epperson* decision to the case before this Court, it is obvious that the government, state or federal, could not constitutionally compel a woman either to foreforego or to undergo an abortion. Nor could it, by the same reasoning, withhold payment for attendant medical services to economically disadvantaged women who choose to resort to abortion while at the same time making such payments to women who do not elect that procedure or *vice versa*. In either case, it would be an unconstitutional law respecting an establishment of religion since it would lack a valid secular legislative purpose. A law ex-

cluding payment for abortion services from the Medicaid program can be no more justifiable under the secular-purpose aspect of the establishment test than a law barring payment from tax-raised funds of the salaries of biology teachers in public schools who include the theory of evolution in their course. The underlying purpose of the laws in both cases would be to inhibit to what the great majority of Americans is a valid, secular undertaking, and both should be declared equally unconstitutional.

2. Primary Effect

The primary effect, or at least *a* primary effect of the statute challenged herein, is to advance religions which forbid abortion and inhibit those which permit it or indeed may affirmatively counsel it in order to mitigate against the tragedies of unplanned pregnancies. This conclusion is inescapable when one views the historical background of anti-abortion laws. That background is set forth in *Roe* v. *Wade,* 410 U.S. 113, at 130-141 (1973), and will not be repeated here. The religious origin and purpose of these laws has been widely recognized by scholars and jurists alike.[3] Justice Douglas noted this in his dissenting opinion in *United States* v. *Vuitch,* 402 U.S. 62, 78-79 (1971):

> Abortion statutes [he said] deal with conduct which is heavily weighted with religious teachings and ethical concepts. Mr. Justice Jackson once spoke of the "treacherous grounds we tread when we undertake to translate ethical concepts into legal ones, case by case." . . . The difficulty and

[3]See D. Callahan, Abortion: Law, Choice and Morality, Ch. 1[2] (1970); J. Noonan, Contraception (1965); Noonan, "Abortion and the Catholic Church: A Summary History," 12 National Law Forum, 85-131 (1967); R.J. Huser, The Crime of Abortion in Canon Law (1942). See also Tietze and Lewitt, "Abortion," 220 Scientific American 21 (January 1969) where opposition to abortion is traced to the rise of the Jewish and Christian religions.

> danger are compounded when religion adds another layer of prejudice. The end result is that juries condemn what they personally disapprove. (Citations omitted.)

Substituting the word "legislatures" for "juries" in the last sentence makes the quotation particularly apposite here.

Justice Douglas quoted the following from an article by former Justice Clark (at 79, n. 2):

> Throughout history religious belief has wielded a vital influence on society's attitude regarding abortion. The religious issues involved are perhaps the most frequently debated aspects of abortion. At the center of the ecclesiastical debate is the concept of "ensoulment" or "personhood," i.e., the time at which the fetus becomes a human organism. The Reverend Joseph F. Donseel of Fordham University admitted that no one can determine with certainty the exact moment at which "ensoulment" occurs, but we must deal with the moral problems of aborting a fetus even if it has not taken place. Many Roman Catholics believe that the soul is a gift of God given at conception. This leads to the conclusion that aborting a pregnancy at any time amounts to the taking of a human life and is therefore against the will of God. Others, including some Catholics, believe that abortion should be legal until the baby is viable, i.e., able to support itself outside the women. In balancing the evils, the latter concluded that the evil of destroying the fetus is outweighed by the social evils accompanying forced pregnancy and childbirth. Religion , Morality, and Abortion; A Constitutional Appraisal, 2 Loyola U.S. Rev. (L.A.) 1, 4 (1969).

It is true that the arguments presented by advocates of return to anti-abortion laws are often presented in terms of morality rather than religion or theology; it could hardly be otherwise in a nation with a strong commitment to the separation of church and state. But, as the Court said in *Bigelow* v. *Virginia,* "a State cannot foreclose the exercise of constitutional rights by mere labels." 421 U.S. 809 at 826 (1975). The association of religion and morals is widely accepted, particularly among those with religious commitments. The "morality plays of Elizabethan England were religious plays. Jefferson called God "the author of all the relations of morality."[4] Clergymen and educators today commonly speak of "moral and spiritual values." The Catholic Church affirms its infallibility in teaching doctrines of "moral and spiritual values," and affirms the need to honor these values in order to be saved.[5] It is no mere concidence that positions on the morality or immorality of abortion vary among religious groups in conformity to their religious commitments. Churches whose doctrine or discipline forbids abortion hold it to be immoral; those whose doctrine or discipline permit abortion do not deem it to be immoral. It would be somewhat difficult for a legislature to charge, or a judge to determine that the religious organizations which are submitting this brief and their many millions of adherents are guilty of seeking to defend immorality.

In the present case, legislatures have sought to impose upon entire communities the religious doctrine of those to whom abortions are sinful. This unconstitutional imposition cannot be justified on the claim that abortion is immoral any more than a law banning the use of contraceptives can be so justified. *Griswold* v. *Connecticut,* 381

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[4]1 A.P. Stokes, Church and State in the United States 337 (1950).

[5]Baltimore Catechism, 1949 Edition, p. 127.

U.S. 479 (1965); *Eisenstadt* v. *Baird,* 405 U.S. 438 (1972). In either case the claim of immorality is no more than an effort to compel the entire community to conform to the religious doctrines of particular groups. That is particularly true where, as in both cases, the majority of Americans do not consider the practice to be immoral.

The conclusion is inescapable that a primary effect of the exclusion of abortion procedures from Medicaid coverage is to advance the religious doctrine of those who hold abortions to violate God's law. It imposes upon those who do not share this view the theology of those who do. At its least, the establishment of religion bans imposing on all of the community the theology of some. It is immaterial whether the theology is that of a majority of the community. Nor is it material whether it is frankly designated as theology or euphemistically labelled morality. As Justice Clark said in the article from which we have already quoted:

> Despite the fact that religious belief continues to permeate our attitude toward abortion, most people today agree with Justice Holmes that "moral predilections must not be allowed to influence our minds in settling legal distinctions." (O.W. Holmes, The Common Law)[6]

3. Entanglement With Religion

Much need not be said in respect to government entanglement in religious controversy and political divisions along religious lines, the avoidance of which was one of

[6]2 Loyola L. Rev. (L.A.) at page 6. It is significiant that Justice Clark was the author of the opinion in *Abington School District* v. *Schempp,* supra, in which the purpose-effect test was formulated. It is obvious that the author of this establishment test did not consider anti-abortion laws and regulations consistent with it.

the major purposes of the Establishment Clause. No one exposed to newspapers, periodicals and other media of public communication can be unaware of the religious acrimony and religio-political divisiveness brought on by the abortion controversy. Framing the controversy in terms of morals aggravates rather than ameliorates the conflict, for it implies that those religious groups who oppose covercive anti-abortion governmental action support or at least condone immorality.

The Court, in *Lemon* v. *Kurtzman,* 403 U.S. 602 (1971), has pointed out the harm to our political system resulting from governmental entanglement with religion. It said (at p. 622):

> Ordinarily political debate and division, however vigorous or even partisan, are normal and healthy manifestations of our democratic system of government, but political division along religious lines was one of the principal evils against which the First Amendment was intended to protect. The potential divisiveness of such conflict is a threat to the normal political process. To have States or communities divide on the issues presented by state aid to parochial schools would tend to confuse and obscure other issues of great urgency. We have an expanding array of vexing issues, local and national, domestic and international, to debate and divide on. It conflicts with our whole history and tradition to permit questions of the Religion Clauses to assume such importance in our legislatures and in our elections that they could divert attention from the myriad issues and problems that confront every level of government. The highways of church and state relationships are not

> likely to be one-way streets, and the Constitution's authors sought to protect religious worship from the pervasive power of government. The history of many countries attests to the hazards of religion's intruding into the political arena or of political power intruding into the legitimate and free exercise of religious belief.

The Court's warning has stark relevancy to the situation in the present case. Few issues have rent the American people and their government so sharply along religious lines as those involved in the abortion controversy, particularly in respect to availability of abortion to the economically disadvantaged.

To sanction partisan involvement by government in such controversies would be to frustrate a major purpose of the Establishment Clause. "Torrents of blood," Madison warned in his Memorial and Remonstrance Against Religious Assessments, "have been spilt in the old world, by vain attempts of the secular arm, to extinguish religious discord by proscribing all difference in religious opinions."[7]

Interreligious tranquility cannot be achieved by governmental entanglement in religious controversy, and especially not by imposing upon all the religious commitments of some. We should not return to the Peace of Augsburg and its Erastian principle, *cujus regio, e jus religio,* whereunder the religion of a province is determined by the religion of its prince or parliament. M.E. Marty, *A Short History of Christianity,* (1959) 245.

[7]Madison's Memorial is set forth in full as an Appendix to Justice Rutledge's dissenting opinion in *Everson,* 330 U.S. 63, 69.

IV. Free Exercise of Religion

There are instances where the dual First Amendment guarantees of church-state separation and freedom of religious exercise are or appear to be in conflict with each other, calling upon or apparently calling upon the courts to make a choice between them. See, e.g., *Walz* v. *Tax Commission,* 397 U.S. 664 (1970) (tax exemption for churches); *Wisconsin* v. *Yoder,* 406 U.S. 205 (1972) (compulsory attendance at secondary schools); *TransWorld Air Lines* v. *Hardison,* 432 U.S. 63 (1977) ("Religious Accommodation" amendment to 1964 Civil Rights Act). Whether or not these cases present real conflict is by no means certain but, in any event, if they do, they constitute the exception rather than the rule. In the overwhelming majority of cases, the dual guarantees of the Amendment support rather than conflict with each other. See, e.g., *Kedroff* v. *St. Nicholas Cathedral,* 344 U.S. 94 (1952); *Torcaso* v. *Watkins, supra.*

The last cited case is particularly apposite. There, as previously noted herein, the Court held violative of both guarantees in the Religion Clause of the First Amendment a state statute barring from public office any person who refused to take an oath that he believed in the existence of God. The Court reached this conclusion notwithstanding the fact that the plaintiff was an avowed atheist and therefore had no religion, at least as that term is generally understood. Just as freedom of speech guarantees equally freedom of nonspeech (*West Virginia State Board of Education* v. *Barnette,* 319 U.S. 624 (1943), so, the Court held, does freedom of religion guarantee freedom of nonreligion or, as often stated, freedom from religion.

It cannot be argued that use of tax-raised funds to finance abortion procedures for the economically under-

privileged violates the Free Exercise rights of those whose religious convictions forbid the procedures. The Court has consistently rejected contentions that use of tax-raised funds to finance flouridated water even where there is no other drinking water available in the community violates the Free Exercise Clause as it applies to persons whose religious conscience forbids drinking fluoridated water. See, *e.g., Birnel* v. *Town of Firecrest,* 361 U.S. 10 (1959), dismissing for want of a substantial federal question, 53 Wash. 2d 830. Similarly, use of tax-raised funds to finance municipal hospitals which employ blood transfusion procedures does not impair the Free Exercise rights of those who deem such procedures as violating God's prohibition of drinking blood. *Cf. Application of Georgetown College,* 331 F.2d 1000, certiorari denied, 377 U.S. 585 (1964).

In these cases, and others that can be cited (e.g., religious convictions against all medical procedures in municipal hospitals, exclusion of Bible-reading or prayer from public school programs) the Court has held that the religious freedom of conscientious objectors to the practices or exclusions is not violated even though their taxes are used in part to finance them. Underlying all these decisions is the basic conclusion that it is the province of the courts, and ultimately the Supreme Court, to adjudge what is secular and what is sectarian, and in respect to the issue in the present case this Court has ruled that access to abortion procedures as to fluoridated water or medical treatment is a secular right not subject to restriction on religious grounds.

What we suggest is that the statutory exclusion of abortion procedures from Medicaid coverage violates the Free Exercise rights of those individuals whose religion counsels that abortion may be justified to protect the health and welfare of the woman and her family. We believe that this conclusion is supported by the Court's interpretation of the Clause in many cases, but with most relevancy to the instant case, in *United States* v. *Steeger,* 380 U.S. 163 (1965).

That case challenged the constitutionality under the Establishment and Free Exercise Clauses of the provision in the Universal Military and Training and Service Act, 50 U.S.C. App. 456 (j), which provided exemption from military training of persons "who, by reasons of religious training and belief [are] conscientously opposed to participation in war in any form." The statute defined religious training and belief to mean "an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code."

The Court avoided the necessity of passing upon the constitutionality of the challenged statute by construing belief "in a relation to a Supreme Being" to encompass any "belief that is sincere and meaningful [and] occupies a placed in the life of the possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the exemption." Thus, in respect to one of the objectants in the case before it, the Court held that the statutory exemption included one who asserted that while he did not believe in a God in the traditional sense, that is "vertically, towards Godness directly," he did believe in "Godness horizontally," that is "through Mankind and the World."

It is difficult to read this interpretation into the textual language of the challenged statute. It is quite obvious, however that the Court employed the device of statutory construction to avoid passing not merely upon the constitutionality of the statute but also declaring it unconstitu-

tional. In the present case the constitutional question cannot easily be avoided through construction. One would not find it easy to interpret the relevant Medicaid provision as exempting from exclusion either women whose conscientious belief as defined in *Seeger* mandates access to abortion procedures or physicians providing the service who share in that belief. It follows, therefore, on the basis of *Seeger,* that if one can have a conscientious belief entitled to constitutional protection against participation in war, one should be entitled to the same constitutional protection if she believes that abortion is in harmony with or is mandated by her religious convictions.

As we have noted, the organizations who join in this brief include among their membership persons whose religious conscience impels access to abortion even when not required to preserve the life of the woman. To deny access on the part of economically disadvantaged women solely or principally because the procedure is contrary to the religious doctrines of some churches is, we submit, to deny her and her physicians the constitutional right to the free exercise of religion.

CONCLUSION

For the reasons stated we believe that judgment appealed from should be affirmed.

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A Call to Concern

The increasing urgency of the issue of abortion rights requires us as teachers and writers of religious ethics to speak out.

Abortion is a serious and sometimes tragic procedure for dealing with fetal life. It raises important ethical issues and cannot be blandly legitimized by the mere whim of an individual. Nevertheless, it belongs in that large realm of often tragic actions where circumstances can render it a less destructive procedure than the rigid prolongation of pregnancy.

We support the Supreme Court decisions of 1973 which had the effect of removing abortion from the criminal law codes. The Court did not appeal to religion or ethics in arriving at its judgment, but we believe the decision to have been in accord with sound ethical judgment. Taking note of the fact that theologians, as well as other experts, disagree on the fundamental moral question of when life begins, the Court decided that the law ought not to compel the conscience of those who believe abortion to be in harmony with their moral convictions.

In the last four years, however, those decisions have been subjected to a relentless attack from those who take the absolutist position that it is always wrong to terminate a pregnancy at any time after the moment of conception. Those who take this absolutist position have not hesitated to equate abortion at any stage of pregnancy with murder or manslaughter. From such an extreme viewpoint, all legal means are considered justified if they limit abortions, no matter what the human consequences for poor women

and others—as in the recent efforts to deny Medicaid funds and to prohibit use of public hospitals for abortion services.

We feel compelled to affirm an alternative position as a matter of conscience and professional responsibility.

1. The most compelling argument against the inflexibility of the absolutist position is its cost in human misery. The absolutist position does not concern itself about the quality of the entire life cycle, the health and well-being of the mother and family, the question of emotional and economic resources, the cases of extreme deformity. Its total preoccupation with the status of the unborn renders it blind to the well-being and freedom of choice of persons in community.

2. "Pro-life" must not be limited to concern for the unborn; it must also include a concern for the quality of life as a whole. The affirmation of life in Judeo-Christian ethics requires a commitment to make life healthy and whole from beginning to end. Considering the best medical advice, the best moral insight, and a concern for the total quality of the whole life cycle for the born and the unborn, we believe that abortion may in some instances be the most loving act possible.

3. We believe it is wrong to deny Medicaid assistance to poor women seeking abortions. This denial makes it difficult for those who need it most to exercise a legal right, and it implies public censure of a form of medical service which in fact has the moral support of major religious groups.

4. We are saddened by the heavy institutional involvement of the bishops of the Roman Catholic Church in a campaign to enact religiously-based anti-abortion commitments into law, and we view this as a serious threat to religious liberty and freedom of conscience. We acknowledge the legal right of all individuals and groups, both religious and secular, to seek laws that reflect their religious and ethical beliefs. But the institutional mobilization of Roman Catholic dioceses, including massive financial contributions by those dioceses to the National Committee for a Human Life Amendment, is inappropriate on this issue. If successful, it would violate the deeply held religious convictions of individual members and official bodies of many other religious groups about when human personhood begins, the relative rights of a woman and a fetus, and responsible family life. This is particularly a problem when there is no clear majority opinion on these fundamental issues nor an adequate social base of consensus for legitimate and enforceable legislation.

5. We call upon the leaders of religious groups supporting abortion rights to speak out more clearly and publicly in response to the dangerously increasing influence of the absolutist position. There may be some ecumenical risks in such candor, but those risks have already been assumed by those who have pressed the absolutist position on religious grounds. In the long run, the true test of ecumenical authenticity is the ability to sustain dialogue and friendship in spite of very sharp disagreements on matters of substance.

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The Religious Coalition for Abortion Rights is comprised of 27 major Protestant, Jewish, Catholic and other religious organizations committed to safeguarding the option of legal abortion, which was guaranteed by the Supreme Court in January 1973. Although the member organizations hold widely varying views on *when* abortion is a moral alternative, all are agreed that individuals must have the right to make decisions concerning abortion based on their own conscience and religious beliefs, and in accordance with responsible medical practice.

The Coalition opposes efforts to prohibit or restrict access to legal abortion, either through constitutional amendment or through federal, state or local legislation. Individuals may support Coalition activities by participating in its nationwide legislative alert network (Dispatch), by subscribing to its monthly newsletter *(Options)*, and by working with its state affiliates.

For further information, please contact the Coalition office.

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HOW WE STAND
The Positions on Abortion of 27 National Religious Organizations
(Published by the Religious Coalition for Abortion Rights, 1979)

RELIGIOUS COALITION FOR ABORTION RIGHTS

STATEMENT OF PURPOSE

The Religious Coalition for Abortion Rights is an organization of national religious bodies which, on the basis of faith and moral conviction and in the light of constitutional guarantees of privacy and religious freedom, seeks to encourage and coordinate support for safeguarding the legal option of abortion; for ensuring the right of individuals to make decisions concerning abortion in accordance with their consciences and responsible medical practice; and for opposing efforts to deny these rights through constitutional amendment, or federal and state legislation.

RATIONALE

Many religious organizations representing diverse denominations have adopted the position that decisions concerning abortion should be made according to individual conscience, consistent with responsible medical practice, free from the threat of criminal penalty.

The 1973 Supreme Court decision of *Roe v. Wade* made abortion a legal medical procedure. The Court ruled that abortion during the first trimester of pregnancy may be determined by the woman and her physician; abortion during the second trimester may be regulated by the state

in order to protect the woman's life and health; and abortion during the third trimester may be prohibited by the state, except when necessary to preserve the life or health of the woman. National polls taken on the issue of abortion indicate that the majority of Americans support this decision.

However, a vocal minority would deny the option of legal abortion to all. Their personal belief that human life exists from the moment of conception has prompted their efforts to nullify the Supreme Court decision through a Constitutional amendment which would prohibit legal abortion altogether, and through federal, state and local legislation which would restrict access to abortion. One theological view would thus become law, binding on Americans of all faiths.

It is vital to increase public awareness of this danger. Enactment of such legislation would violate the religious freedom of every citizen by circumventing the First Amendment guarantee of church-state separation. All concerned with religious liberty must join in opposing this attempt to return us to the era of criminal abortion.

Religious organizations have a unique responsibility to contribute to this effort.

Recognizing that each denomination has its own perspective on when abortion is morally justified, the Religious Coalition for Abortion Rights maximizes the effectiveness of its members by coordinating their efforts to maintain the option of legal abortion. RCAR also cooperates with other national and community organizations which share its goals.

The Coalition is directed by an inter-religious policy committee and served by a full-time staff. In addition to a

Washington office, it includes state affiliates throughout the country, and is thus active on the national, state and local levels.

AMERICAN BAPTIST CHURCHES[1]

Because Christ calls us to affirm the freedom of persons and the sanctity of life, we recognize that abortion should be a matter of responsible personal decision. To this end we as American Baptists urge that legislation be enacted to provide:

1. That the termination of a pregnancy prior to the end of the 12th week (first trimester) be at the request of the individual(s) concerned and be regarded as an elective medical procedure governed by the laws regulating medical practice and licensure.
2. After that period the termination of a pregnancy shall be performed only by a duly licensed physician at the request of the individual(s) concerned, in a regularly licensed hospital, for one of the following reasons as suggested by the Model Penal Code of the American Law Institute:
   a. When document evidence exists that this is a danger to the physical or mental health of the woman;
   b. When there is documented evidence that the conceptus has a physical or mental defect;
   c. When there is documented evidence that the pregnancy was the result of rape, incest or other felonious acts.

[1]Adopted by the Annual Meeting of the American Baptist Convention, May, 1968.

Further we encourage our churches to provide sympathetic and realistic counseling on family planning and abortion.

We recommend study, research and development of understanding on the part of the populace led by the people of our churches toward an enlightened view of this provocative problem.

AMERICAN ETHICAL UNION[2]

The American Ethical Union, a federation of ethical-humanist societies, disapproves of efforts to amend or circumvent the United States Constitution to nullify or impede the decision of the United States Supreme Court regarding abortion.

Abridgement of individual civil and human liberties as guaranteed by the United States Constitution is a danger to all. Among those liberties that must continue free of threat is the right of every woman to self-determination insofar as continued pregnancy is concerned.

NATIONAL WOMEN'S CONFERENCE AMERICAN ETHICAL UNION

The National Women's Conference of the American Ethical Union, an ethical-humanist religious organization, believes in the right of each individual to exercise his or her conscience; every woman has a civil and human right to determine whether or not to continue her pregnancy. We support the decision of the United States Supreme Court of January 22, 1973 regarding abortion.

[2]Adopted by the Annual Assembly of the American Ethical Society, June, 1976.

We believe that no religious belief should be legislated into the legal structure of our country; the state must be neutral in all matters related to religious concepts.

We believe that the First Article of the Bill of Rights guaranteeing separation of church and state should be rigorously observed so that religious freedom will be ensured to all.

Furthermore, we believe all attempts to amend the Constitution which would dilute that freedom in any manner will undermine other fundamental rights in the U.S. Constitution.

AMERICAN HUMANIST ASSOCIATION[3]

The American Humanist Association reaffirms the ethical and moral responsibilities of all humanist parents to avoid bringing into this world children who are not wanted; to avoid bringing children into an environment of neglect and abuse; to assure that children are well-born; and to provide an affectionate, loving and healthy environment for all children that they may enjoy an equal opportunity to realize the fullness and uniqueness of their own humanity.

We affirm the moral right of women to become pregnant by choice and to become mothers by choice. We affirm the moral right of women to freely choose a termination of unwanted pregnancies. We oppose actions by individuals, organizations and governmental bodies that attempt to restrict and limit the woman's moral right and obligation of responsible parenthood.

[3]Adopted by the Annual Meeting of the American Humanist Association, May, 1977.

We also affirm the right and moral responsibility of parents and future parents to be free from ignorance on matters of human sexuality and to have access to contraceptive methods in order to prevent unwanted pregnancies and abortions; and to avoid the spread of venereal disease.

We hold these moral rights of responsible parenthood as part of our humanistic religious heritage and consider infringements upon these moral rights as an infringement upon the free exercise of our humanistic religious principles as guaranteed by the First Amendment to the Constitution of the United States.

AMERICAN JEWISH CONGRESS[4]

The American Jewish Congress expresses its total support for the decisions of the United States Supreme Court of January 1973 interpreting the Bill of Rights as restricting legislation limiting the right of a woman to choose whether to bear a child. We oppose efforts to nullify those decisions, through the adoption of constitutional amendments or through the enactment of legislative riders barring the use of government funds for the performances of abortions which a woman and her doctor believe should be performed.

We respect the religious and conscientious scruples of those who reject the practice of abortion. However, to the extent that they would embody those scruples in law binding on all, we oppose them.

There is now a powerful drive to discredit the Supreme Court decisions. The answer must be equally powerful.

[4]Adopted by the Biennial Convention of the American Jewish Congress, April, 1976.

Accordingly, we pledge ourselves to effective educational efforts to ensure that Americans understand how the drive for anti-abortion laws would impair the basic rights of religious freedom, privacy and equality.

B'NAI B'RITH WOMEN[5]

Although we recognize there is a great diversity of opinion on the issue of abortion, we also underscore the fact that every woman should have the legal choice with respect to abortion consistent with sound medical practice and in accordance with her conscience.

We wholeheartedly support the concepts of individual freedom of conscience and choice in the matter of abortion. Any constitutional amendment prohibiting abortion would deny to the population at large their basic rights to follow their own teachings and attitudes on this subject which would threaten First Amendment rights. Additionally, legislation designed to ban federal funding for health facilities for abortions is discriminatory, since it would affect disadvantaged women, who have no access to expensive private institutions.

Since our earlier resolution regarding a woman's right to an abortion was approved before the historic Supreme Court decision of 1973 (*Roe v. Wade*) which guaranteed this option, we herewith declare our staunch support of said decision.

We continue to urge our membership at every level to join community and organizational efforts to oppose all legislation and constitutional amendments which would

[5]Adopted by the Biennial Convention of B'nai B'rith Women, March, 1976.

seek to overturn or nullify the 1973 Supreme Court decision.

CATHOLICS FOR A FREE CHOICE[6]

Catholics for a Free Choice is a national organization of Catholics dedicated to the principle that women have the right and duty to follow their conscience regarding decisions on contraception and termination of pregnancy; and that the law has a corresponding right and duty to make it possible for them to implement those choices under medically safe conditions.

We affirm the religious liberty of Catholic women and men and those of other religions to make decisions regarding their own fertility free from church or governmental interventions in accordance with their own individual conscience.

CHRISTIAN CHURCH (DISCIPLES OF CHRIST)[7]

WHEREAS, the Christian Church (Disciples of Christ) has proclaimed that in Christ, God affirms freedom and responsibility for individuals, and

WHEREAS, legislation is being introduced in the U.S. Congress which would embody in law one particular opinion concerning the morality of abortion which would limit each individual's freedom and responsibility in such matters.

[6]Position statement of Catholics For a Free Choice, June, 1975.

[7]Adopted by the Fourth Biennial General Assembly of the Christian Church (Disciples of Christ), August, 1975.

THEREFORE BE IT RESOLVED, that the General Assembly of the Christian Church (Disciples of Christ) meeting at San Antonio, Texas, August 15-20, 1975.

1. Affirm the principle of individual liberty, freedom of individual conscience, and sacredness of life for all persons.
2. Respect differences in religious beliefs concerning abortion and oppose, in accord with the principle of religious liberty, any attempt to legislate a specific religious opinion or belief concerning abortion upon all Americans,
3. Provide through ministry of the local congregation, pastoral concern, and nurture of persons faced with the responsibility and trauma surrounding undesired pregnancy.

EPISCOPAL WOMEN'S CAUCUS[8]

WHEREAS, we are deeply disturbed over the increasingly bitter and divisive battle being waged in legislative bodies to force continuance of unwanted pregnancies and to limit an American woman's right to abortion; and

WHEREAS, we believe that all should be free to exercise their own consciences on this matter and that where widely differing views are held by substantial sections of the American religious community, the particular belief of one religious body should not be forced on those who believe otherwise; and

WHEREAS, to prohibit or severely limit the use of public funds to pay for abortions abridges and denies the right to an abortion and discriminates especially against low income, young and minority women; therefore be it

[8]Adopted by the Annual Meeting of the Episcopal Women's Caucus, April, 1978.

RESOLVED, that the Episcopal Women's Caucus affirms the position of the 1976 General Convention of the Episcopal Church in expressing its "unequivocal opposition to any legislation on the part of national or state governments which would abridge or deny the right of individuals to reach informed decisions on this matter and to act upon them."; and be it further

RESOLVED, that the Episcopal Women's Caucus urges its members to actively work to assure the continuance of federal, state and local funds for abortion.

NATIONAL COUNCIL OF JEWISH WOMEN[9]

The National Council of Jewish Women believes that the freedom, dignity and security of the individual are basic to American democracy, that individual liberty and rights guaranteed by the Constitution are keystones of a free society, and that any erosion of these liberties or discrimination against any person undermines that society.

It is resolved . . . To promote public understanding that abortion is an individual right and to work to eliminate any obstacles that limit this right.

NATIONAL FEDERATION OF TEMPLE SISTERHOODS[10]

The National Federation of Temple Sisterhoods affirms our previously adopted strong support for the right of a woman to obtain a legal abortion, under conditions now outlined in the 1973 decision of the United States Supreme

[9]Adopted by the Biennial Convention of the National Council of Jewish Women, 1969; reaffirmed, 1977.

[10]Adopted by the Biennial Assembly of the National Federation of Temple Sisterhoods, November, 1975.

Court. The Court's position established that during the first two trimesters, the private and personal decision of whether or not to continue to term an unwanted pregnancy should remain a matter of choice for the woman; she alone can exercise her ethical and religious judgment in this decision. Only by vigorously supporting this individual right to choose can we also ensure that every woman may act according to the religious and ethical tenets to which she adheres.

We oppose laws which would remove abortion from the category of medical assistance, as well as any discriminatory laws which would effectively prevent women from making the choice which is their right, by denying them access to proper medical care.

NFTS reaffirms our commitment to "Taharat Hamishpachah" — the purity of the family — and supports the dissemination of birth control information, as well as other education for family planning as a contribution to responsible family life. Such education and parallel efforts to eradicate ignorance and poverty would substantially reduce the need to make the choice for abortion.

PRESBYTERIAN CHURCH IN THE U.S.[11]

1) Induced abortion is the willful destruction of the fetus. Therefore, the decision to terminate a pregnancy should never be made lightly or in haste.

2) The willful termination of pregnancy by medical means on the considered decision of a pregnant woman may on occasion be morally justifiable. Possible justifying circumstances would include medical indications of

[11]Adopted by the General Assembly of the Presbyterian Church in the U.S., 1970.

physical or mental deformity, conception as a result of rape or incest, conditions under which the physical or mental health of either mother or child would be gravely threatened, or the socio-economic condition of the family. The procedure should be performed only by licensed physicians under optimal conditions, and with appropriate medical consultation and ministerial counseling, preferably with her own minister.

3) Laws concerning abortion should reflect principles set forth in this paper.

4) Medical intervention should be made available to all who desire and qualify for it, not just to those who can afford preferential treatment.

5) The church should develop a greater pastoral concern and sensitivity to the needs of persons involved in "problem pregnancies." Such persons should be aided in securing professional counseling about the various alternatives open to them in order that they may act responsibly in the light of their moral commitments, their understanding of the meaning of life, and their capacities as parents.

UNION OF AMERICAN HEBREW CONGREGATIONS[12]

The UAHC reaffirms its strong support for the right of a woman to obtain a legal abortion on the constitutional grounds enunciated by the Supreme Court in its 1973 decision in *Roe v. Wade,* 410 U.S. 113 and *Doe v. Bolton,* 410 U.S. 179 which prohibit all governmental interference in abortion during the first trimester and permits only those regulations which safeguard the health of the woman dur-

[12]Adopted by the General Assembly of the Union of American Hebrew Congregations, November, 1975.

ing the second trimester. This rule is a sound and enlightened position on this sensitive and difficult issue, and we express our confidence in the ability of the woman to exercise her ethical and religious judgment in making her decision.

The Supreme Court held that the question of when life begins is a matter of religious belief and not medical or legal fact. While recognizing the right of religious groups whose beliefs differ from ours to follow the dicates of their faith in this matter, we vigorously oppose the attempts to legislate the particular beliefs of those groups into the law which governs us all. This is a clear violation of the First Amendment. Furthermore, it may undermine the development of interfaith activities. Mutual respect and tolerance must remain the foundation of interreligious relations.

We oppose those riders and amendments to other bills aimed at halting medicaid, legal counselling and family services in abortion-related activities. These restrictions severely discriminate against and penalize the poor who rely on governmental assistance to obtain the proper medical care to which they are legally entitled, including abortion.

We are opposed to attempts to restrict the right to abortion through constitutional amendments. To establish in the Constitution the view of certain religious groups on the beginning of life has legal implications far beyond the question of abortion. Such amendments would undermine constitutional liberties which protect all Americans.

In keeping with the spirit of this resolution and to actualize its aims, we join with the Central Conference of American Rabbis in urging Reform Jews and their national and local institutions to cooperate fully with the Religious Coalition for Abortion Rights.

UNITARIAN UNIVERSALIST ASSOCIATION
UNITARIAN UNIVERSALIST WOMEN'S FEDERATION[13]

WHEREAS, attempts are now being made to deny Medicaid funds for abortion and to enact Constitutional amendments that would limit abortions to life-endangering situations and thus remove this decision from the individual and her physicians; and

WHEREAS, such legislation is an infringement of the principle of the separation of church and state as it tries to enact a position of private morality into public law; and

WHEREAS, such anti-abortion legislation would cause the revival of illegal abortion and result in the criminal exploitation of women who are without money or influence forcing them to resort to unsafe procedures; and

WHEREAS, we affirm the right of each woman to make the decisions concerning her own body and future and we stress the responsibilities and long-term commitment involved in the choice of parenthood,

WHEREAS, the majority of the Supreme Court has ruled on June 20, 1977 that the states are not obligated to expend Medicaid funds for elective abortions, and has also ruled that public hospitals are not obligated to perform abortions,

WHEREAS, there is a strong national movement to have 2/3 of the state legislatures request Congress to convene a constitutional convention for the purpose of proposing a constitutional amendment to prohibit abortion.

THEREFORE, BE IT RESOLVED: That the 1977 General Assembly of the Unitarian Universalist Association expresses its dismay and regret at the June 20, 1977 decision of the Supreme Court as seriously jeopardizing the right of legal abortion won in the Supreme Court decisions of January 1973, opposes the denial of Medicaid funds for abortions and any constitutional amendment prohibiting abortion, and urges members of the societies of the Unitarian Universalist Association to write or wire their Representatives and Senators in Congress and State legislatures to inform them of our position on these issues.

[13]Adopted by the 16th General Assembly of the Unitarian Universalist Association, June, 1977.

THEREFORE, BE IT RESOLVED: that the 1977 General Assembly of the Unitarian Universalist Association goes on record as opposing the calling of a national constitutional convention for the purpose of amending the Constitution to prohibit abortion.

BE IT FURTHER RESOLVED, That the 1977 General Assembly positively admits its respect for the responsibilities and joys of parenthood, and the member societies of the Unitarian Universalist Association are encouraged to develop workshops and other programs on parenthood and parenting.

BE IT FURTHER RESOLVED, that the 1977 General Assembly urges that federal funds be invested in research to find more effective and safer methods of birth control.

UNITED CHURCH OF CHRIST[14]

The theological and scientific views on when human life begins are so numerous and varied that one particular view should not be forced on society through its legal system.

[14]Adopted by the Eighth General Synod of the United Church of Christ, June, 1971; reaffirmed by the 11th General Synod, June, 1977.

Present laws prohibiting abortion are neither just nor enforceable. They compel women either to bear unwanted children or to seek illegal abortions regardless of the medical hazards and suffering involved. By severely limiting access to safe abortions, these laws have the effect of discriminating against the poor.

The mere liberalization of the laws have not proven to be a viable solution to the problem of illegal abortions. The liberalized laws tend to cause more rigidity and narrowness of interpretation, and, in any case, cannot cover all circumstances in which an abortion may be appropriate.

For these reasons, the Eighth General Synod of the United Church of Christ calls for the repeal of all legal prohibitions of physician-performed abortions. This would take abortion out of the realm of penal law and make voluntary and medically safe abortions legally available to all women. Simultaneously we ask that adequate protection be given to "conscientious objectors" against abortion, including physicians, nurses, and prospective mothers . . .

(The 11th General Synod) . . . Deplores the June 20, 1977 decision of the U.S. Supreme Court and recent actions of the U.S. Congress that effectually deprive the poor of their Constitutional rights of choice to end or complete a pregnancy, while leaving the well-to-do in the full enjoyment of such rights.

UNITED METHODIST CHURCH[15]

Resolution on Responsible Parenthood

We affirm the principle of responsible parenthood . . . . the decision whether or not to give birth to children must include acceptance of the responsibility to provide for their mental, physical, and spiritual growth, as well as consideration of the possible effect on quality of life for family and society.

When, through contraceptive or human failure, an unacceptable pregnancy occurs, we believe that a profound regard for unborn human life must be weighed alongside an equally profound regard for fully developed personhood, particularly when the physical, mental, and emotional health of the pregnant woman and her family show reason to be seriously threatened by the new life just forming. We reject the simplistic answers to the problem of abortion, which on the one hand regard all abortions as murders, or on the other hand, regard abortions as medical procedures without moral significance.

When an unacceptable pregnancy occurs, a family, and most of all the pregnant woman is confronted with the need to make a difficult decision. We believe that continuance of a pregnancy which endangers the life or health of the mother, or poses other serious problems concerning the life, health, or mental capability of the child to be, is not a moral necessity. In such a case, we believe the path of mature Christian judgment may indicate the advisability of abortion. We support the legal right to abortion as established by the 1973 Supreme Court decisions. We encourage women in counsel with husbands, doctors, and

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[15]Adopted by the General Conference of the United Methodist Church, 1976.

pastors to make their own responsible decisions concerning the personal or moral questions surrounding the issue of abortion.

We therefore encourage our churches and common society to:

7. Safeguard the legal option of abortion under standards of sound medical practice, and make abortions available to women without regard to economic status.

Statement of Social Principles

The beginning of life and the ending of life are the God-given boundaries of human existence. While individuals have always had some degree of control over when they would die, they now have the awesome power to determine when and even whether new individuals will be born. Our belief in the sanctity of unborn human life makes us reluctant to approve abortion. But we are equally bound to respect the sacredness of the life and well-being of the mother, for whom devastating damage may result from an unacceptable pregnancy. In continuity with past Christian teaching, we recognize tragic conflicts of life with life that may justify abortion. We call all Christians to a searching and prayerful inquiry into the sorts of conditions that may warrant abortion. We support the legal option of abortion under proper medical procedures . . . .

WOMEN'S DIVISION
BOARD OF GLOBAL MINISTRIES
UNITED METHODIST CHURCH[16]

As members of the Women's Division of the Board of Global Ministries, we are deeply disturbed over the increasingly bitter and divisive battle being waged to place an amendment in the U.S. Constitution to ban abortion.

We believe deeply that all should be free to express and practice their own moral judgment on the matter of abortion. We also believe that on this matter, where there is no ethical or theological consensus, and where widely differing views are held by substantial sections of the religious community, the Constitution should not be used to enforce one particular religious belief on those who believe otherwise.

In 1969 the Women's Division first took the step of calling for the removal of abortion from the criminal code, putting its regulation instead under standard codes of medical practice. In 1970 this position was adopted by the General Conference and in 1972 it was reaffirmed in the Social Principles of our denomination, which states that "in continuity with past Christian teachings, we recognize tragic conflicts of life with life that may justify abortion." This position is in accord with that of many other major Protestant denominations and Jewish faith communities.

When the Supreme Court decision of January 1973 made possible the legal option of abortion in all states, we hoped that all those concerned with this problem could turn their attention to seeking to remove conditions in our society which might create a need for abortion, such as faulty contraceptives, lack of education on responsible

[16]Adopted by the Spring Meeting of the Women's Division of the Board of Global Ministries, United Methodist Church, April, 1975.

sexuality, lack of access to family-planning services, tragedies such as rape, incest and genetic defects.

Now we find, instead that vast amounts of energy, money and time are going to the attempt to use national legislation and even the Constitution to force continuation of pregnancies, no matter what the human or social cost. Various kinds of legal and social pressures are being used to intimidate doctors and hospitals who are involved in abortion.

Amendments which prohibit or restrict abortion rights are being proposed for a number of health related bills. If such legislation is approved the most direct effect would be against the poor who cannot afford to travel to the places where safe legal abortions are available. These women then become targets for exploitation by unskilled abortionists working in unsanitary and illegal facilities.

We affirm our belief in freedom of conscience on this matter. We are concerned about those who have been bitterly attacked for seeking to deal openly with this issue in a spirit of compassion. Although we respect the right of other religious individuals and groups to disagree on the matter of abortion, we earnestly make the appeal that our differences be embued with a spirit of ecumenical relationships.

Conclusion

The struggle raging over abortion centers largely on religious and philosophical differences rather than on the types of social factors which normally fall within the purview of government. We, therefore, affirm once more our belief that where there is no religious or moral consensus in our society, the attempt to embody one particular moral viewpoint in the United States Constitution does serious

injury to our cherished freedom of religious belief and conscience.

UNITED PRESBYTERIAN CHURCH, USA[17]

WHEREAS, God has given persons the responsibility of caring for creation as well as the ability to share in it, and has shown his concern for the quality and value of human life; and

WHEREAS, sometimes when the natural ability to create life and the moral and spiritual ability to sustain it are not in harmony, the decisions to be made must be understood as moral and ethical ones and not simply legal; and

WHEREAS, society now provides minimal care for unwanted children and inadequate support systems for women with children; and

WHEREAS, Most present abortion laws are inadequate and morally and ethically unjustifiable because: (a) the laws do not deal with the problem of the bodily rights of women nor affirm thei. life and health; (b) the laws do not grant women the right not to bear unwanted children; (c) the laws do not deal with the emotional, social, or economic welfare of other members of a family into which an unwanted child may be born; (d) the laws fail to solve the problem of illegal abortions but leave the problem to be handled by criminals, quack practitioners, and a small number of reputable physicians willing to risk their practice and reputation by performing abortion; (e) the laws do not relieve the burden which the present structure places on the poor and on those who are unsophisticated

[17]Adopted by the 184th General Assembly of the United Presbyterian Church, U.S.A., May, 1972.

about the ways of medicine and the law; and (f) the laws do not insure the right of all children to be born as wanted children;

THEREFORE, In support of the concern for the value of human life and human wholeness and for the freedom of choice advocated in the report, "Sexuality and the Human Community," received for study by the 182nd General Assembly (1970), in support of the call to repeal inadequate abortion laws approved by that General Assembly (see *Minutes,* 1970, Part I, p. 891), and in support of the resolution passed by United Presbyterian Women (1970), the 184th General Assembly (1972):

a. Urges the development, support, and expansion of agencies where women with problem pregnancies have assistance and counseling on options such as keeping the child, adoption alternatives, and abortion, with future access to birth control methods. As part of the counseling process, it urges consideration of the feelings of the father and the family.

b. Declares that women should have full freedom of personal choice concerning the completion or termination of their pregnancies and that the artificial or induced termination of pregnancy, therefore, should not be restricted by law, except that it be performed under the direction and control of a properly licensed physician.

c. Continues to support the establishment of medically sound, easily available and low-cost abortion services.

d. Urges the church to demonstrate its concern for women with small children by encouraging (1) the support of prenatal care for all pregnant women, (2)

the principle that all children are legitimate at birth, (3) the establishment of support groups for single women who elect to keep their children, and (4) the formation of high quality child development centers.

e. Supports legislation to repeal abortion laws not in harmony with this statement and encourages responsible groups working for such repeal.

f. Urges the development and dissemination of Biblical and theological materials on the issue of abortion in order to facilitate responsible dialogue.

g. Directs the Stated Clerk of the General Assembly to urge synods and presbyteries to study and take appropriate action on the issue of abortion in line with sections a through f above, including training opportunities for pastors and laypersons in counseling on problem pregnancies.

h. Directs the Stated Clerk of the General Assembly to request seminaries to include appropriate consideration of the issue of abortion in courses in pastoral counseling and social ethics as well as in continuing education programs offered to clergy, and to request church-related colleges to consider the issue of abortion in appropriate courses, programs, or counseling services.

UNITED SYNAGOGUE OF AMERICA[18]

In 1967 the Metropolitan Region of the United Synagogue of America presented testimony in favor of abortion law reform before a committee of the New York State Legislature. In this testimony, reflecting the views

[18]Adopted by the Biennial Convention of the United Synagogue of America, November, 1975.

of the Law Committee of the Rabbinical Assembly as well, the United Synagogue said:

> "Rabbinic law holds that 'the mother has theoretical power over the foetus as part of herself.' She must, however, have valid and sufficient warrant for depriving it of potential life. The Talmud and subsequent rabbinic response throughout the centuries have ruled on what is or is not adequate warrant.
>
> "In all cases 'the mother's life takes precedence over that of the foetus' up to the minute of its birth. This is to us an unequivocal principle. A threat to her basic health is moreover equated with a threat of her life. To go a step further, a classical responsum places danger to one's psychological health, when well established, on an equal footing with a threat to one's physical health. Although the definition and determination of the seriousness of these threats are subject to detailed and specific discussion, the principle is none the less clear."

The United Synagogue of America reaffirmed this position in a later statement issued by the presidents and executive vice-presidents of the United Synagogue of America and the Rabbinical Aseembly emphasizing that abortions, "though serious even in the early stages of conception, are not to be equated with murder, hardly more than is the decision not to become pregnant."

Since then the United States Supreme Court prohibited all governmental interference in abortion during the first trimester and permitted those regulations which safeguard the health of the woman during the second trimester. The court held that whether or not to terminate an unwanted pregnancy during the first two trimester remains a matter of choice for the woman.

The United Synagogue affirms once again its position that "abortions involve very serious psychological, religious, and moral problems, but the welfare of the mother must always be our primary concern" and urges its congregations to oppose any legislative attempts to weaken the force of the Supreme Court's decisions through constitutional amendments or through the deprivation of medicaid, family services and other current welfare services in cases relating to abortion.

WOMEN'S LEAGUE FOR CONSERVATIVE JUDAISM[19]

National Women's League believes that freedom of choice as to birth control and abortion is inherent in the civil rights of women.

We believe that all laws infringing on these rights should be repealed, and we urge our Sisterhoods to work for the implementation of this goal.

YOUNG WOMEN'S CHRISTIAN ASSOCIATION, U.S.A.[20]

In the 24th National Convention of the YWCA of the U.S.A. in Boston, Mass., April, 1967, the delegates voted to work to liberalize the abortion laws, and in the following three year period many YWCAs studied the issues, attended hearings in their State Capitals, and kept in touch with the results of liberalization. Across the country, members became convinced that repeal of abortion laws was the answer because laws with specifications can

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[19]Adopted by the Biennial Convention of the Women's League for Conservative Judaism, November, 1974.

[20]Adopted by the National Board of the Young Women's Christian Association of the U.S.A., December, 1973.

discriminate against the poor who cannot afford to travel to places where legal, safe abortions are available. These women are at the mercy of unskilled abortionists working under unsanitary facilities.

The decision to give emphasis to the repeal of all laws restricting or prohibiting abortions performed by a duly licensed physician was voted in the 25th National Convention of the YWCA of the U.S.A. in Houston, Texas, in April, 1970. Delegates representing 48 states were selected by their local Associations, and voting delegates were empowered to cast their votes, keeping in mind the best interests of the total YWCA. The decision to support repeal of restrictive abortion laws was passed unanimously.

In the 26th National Convention in San Diego in March, 1973, delegates voted to "support efforts to provide safe, low-cost abortions to all women who desire them."

In line with our Christian Purpose, we, in the YWCA, affirm that a highly ethical stance is one that has concern for the quality of life of the living as well as for the potential for life. We believe that a woman also has a fundamental, constitutional right to determine, along with her personal physician, the number and spacing of her children. Our decision does not mean that we advocate abortion as the most desirable solution to the problem, but rather that a woman should have the right to make the decision. Along with the YWCA, many religious, social work and medical groups have endorsed repeal of abortion laws because this makes it possible for a woman to have access to safe medical service if this seems the solution that she and her physician decide upon. This point of view is taken by many women who themselves would not seek an abortion.

Because the YWCA voted as its overall imperative to work to eliminate racism wherever it occurs in institutions, it has a concern that no woman should be deprived of services that others can have, but it also is concerned that no woman be pressured into decisions which are not in their best personal interest.